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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,883	08/10/2004	Vincent Bove	7298.125.NPUS00	7967
68768 7590 03/09/2009 NOVAK DRUCE AND QUIGG, LLP (Thule) 1000 LOUISIANA STREET FIFTY-THIRD FLOOR HOUSTON, TX 77002				
EXAMINER VANTERPOOL, LESTER L				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/710,883

Applicant(s)

BOVE ET AL.

Examiner

LESTER L. VANTERPOOL

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 10, 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/302)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 10, 2008 has been entered.

Examiner notes: claims 1 – 31 have an effective filing date of August 10, 2004 because of "cradle having at least two spaced apart and aligned through – passages".

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 – 16, 18, 20, 22 – 26, 30 & 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen et al., (U.S. Patent Number 6336580 B1).

Allen et al., discloses the frame assembly (24) adapted to be mounted to the carrying vehicle (14), the frame assembly (24) comprising at least one elongate arm (30A) configured to receive the bicycle cradle (32) thereupon;

the bicycle cradle (32) mounted upon the arm (30A) and being operator configurable between the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1) and the non-transporting configuration (i.e. Unfasten / Unclasp (32));

the cradle (32) having at least two spaced apart and aligned through-passages (See Figure 2) within which the elongate arm (30A) is received in the non-transporting configuration (i.e. Unfasten / Unclasp (32)), the cradle (32) being operator reciprocal on the elongate arm (30A) in the non-transporting configuration thereby facilitating variable longitudinal positioning of the cradle (32) by the operator upon the arm (30A);

the cradle (32) having the increased resistance to longitudinal reciprocation on the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1) in comparison to the non-transporting configuration (i.e. Unfasten / Unclasp (32)) and thereby being effectively longitudinally fixed on the elongated arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1) to the extent that the secured portion of the carried bicycle (16) in the cradle (32) is longitudinally fixed relative to the elongated arm (30A) during transport on the load carrier arrangement (10) (See Column 3, lines 11 – 26) (See Figures 1 & 2).

Regarding claim 2, Allen et al., discloses the frame assembly (24) adapted to be mounted to the carrying vehicle (14), the frame assembly (24) comprising at least one elongate arm (30A) configured to receive the bicycle cradle (32) thereupon;

the anchor means (32) for fixing the bicycle (16) upon the arm (30A), the anchor means (32) being adapted for operator configuration between the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1) and the non-transporting configuration (Unfasten / Unclasp (32));

the anchor means (32) having at least two spaced apart and aligned through-passage (See Figure 2) within which the elongate arm (30A) is received in the non-transporting configuration (i.e. Unfasten / Unclasp (32)) and which is adapted for being operator reciprocated on the elongate arm (30A) in the non-transporting configuration (i.e. Unfasten / Unclasp (32)) for establishing variable longitudinal positioning of the anchor means (32) by the operator upon the arm (30A); and

the anchor means (32) having the increased resistance to longitudinal reciprocation on the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1) in comparison to the non-transporting configuration (i.e. Unfasten / Unclasp (32)) for being effectively longitudinally fixed on the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Unclasp (32) in Figure 1) to an extent that the secured portion of the carried bicycle (16) in the anchor means (32) is longitudinally fixed relative to the elongate arm (30A) during transport on the load carrier arrangement (10) (See Column 3, lines 11 – 26) (See Figures 1 & 2).

Regarding claim 3, Allen et al., discloses the anchor means (32) is bicycle cradle (See Figures 1 & 2).

Regarding claim 4, Allen et al., discloses the method step of providing the load carrier arrangement (10) for transporting the bicycle (16) when secured thereupon, the method step comprising: utilizing the load carrier arrangement (10) having the frame assembly (24) mounted to the carrying vehicle (14) and that includes the elongated arm (30A) configured to receive the bicycle cradle (32) thereupon to transport the bicycle (16), the bicycle cradle (32) being operator configurable between the bicycle transporting configuration (Fasten / Clapsed (32) in Figure 1) in which the cradle (32) is tight-fitting upon the arm and the non-transporting configuration (i.e. Unfasten / Unclapsed (32)) in which the cradle (32) is comparably loose-fitting upon the arm (30A); and reconfiguring the bicycle cradle (32) to the non-transporting configuration (i.e. Unfasten / Unclapsed (32)) after transporting use and thereby limiting strain induced, cold-flow creep in the bicycle cradle (32) that results in the reduction of tightness of fit of the cradle (32) upon the arm (30A) to periods when the bicycle transporting configuration (i.e. Fastened / Clapsed (32) in Figure 1) being assumed, wherein the cradle (32) has at least two spaced apart and aligned through-passages (See Figures 1 & 2) within which the elongate arm (30A) is received in the non-transporting configuration (See Unfastened / Unclapsed (32)).

Regarding claim 5, Allen et al., discloses preserving the designed tightness-of-fit of the cradle (32) upon the arm (30A) during bicycle transporting configuration (i.e. Fastened / Clasped (32) in Figure 1) by the limitation of strain induced, cold-flow creep in the bicycle cradle (32).

Regarding claim 6, Allen et al., discloses the cradle (32) has the through-passage within which the elongate arm (30A) is received, the cradle (32) being operator reciprocal on the elongate arm (30A) in the non-transporting configuration (i.e. Unfasten / Unclasped (32)) thereby facilitating variable longitudinal positioning of the cradle (32) by the operator upon the arm (30A); and the cradle (32) having the increased resistance to longitudinal reciprocation of the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasped (32) in Figure 1) in comparison to the non-transporting configuration (i.e. Unfasten / Unclasped (32)) and thereby being effectively longitudinally fixed on the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasped (32) in Figure 1) to the extent that the secured portion of the carried bicycle (16) in the cradle (32) is longitudinally fixed relative to the elongated arm (30A) during transport on the load carrier arrangement (10).

Regarding claim 7, Allen et al., discloses the cradle (32) comprises the plurality of cradle pieces (See Figures 1 & 2).

Regarding claim 8, Allen et al., discloses each aperture is the through-passage is constituted by the series of apertures, one each located in one of the plurality of the cradle pieces (32) (See Figures 1 & 2).

Regarding claim 9, Allen et al., discloses the series of apertures constituting the through-passage are in series and sufficiently aligned in the longitudinal direction in the non-transporting configuration (i.e. Unfasten / Unclasp (32)) to achieve the facilitation of variable longitudinal positioning of the cradle (32) by the operator upon the arm (30A) (See Figures 1 & 2).

Regarding claim 10, Allen et al., discloses at least one of the series of apertures constituting the through-passage is sufficiently misaligned in the transporting configuration (i.e. Fasten / Clasp (32) in Figure 1) to establish the binding effect between the cradle (32) and the elongate arm (30A) and thereby effects the longitudinal fixation of the cradle (32) on the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1).

Regarding claim 11, Allen et al., discloses the cradle (32) from the non-transporting configuration (i.e. Unfastened / Unclasp (32)) to the bicycle transporting configuration (i.e. Fastened / Clapsed (32) in Figure 1) establishes the binding effect between the cradle (32) and the elongate arm (30A) sufficient to establish the anchor for

the secured portion of the carried bicycle (16) in the cradle (32) during transport (See Figures 1 & 2).

Regarding claim 12, Allen et al., discloses the cradle (32) comprises the plurality of variably configurable cradle portions (See Figures 1 & 2), at least one of the cradle portions (i.e. Mid – Section of (32) in Figures 1 & 2) being the binding assembly (i.e. See Rubber Circular Rings of (32) in Figures 1 & 2) that more forcefully abuts the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1) than in the non-transporting configuration (Unfasten / Unclasp (32)).

Regarding claim 13, Allen et al., discloses the binding assembly comprises (i.e. Strap Portion securing the horizontal bar of bicycle (16) in Figure 1) the binding portion (i.e. Strap of (32) in Figure 1) coupled to the lever portion (i.e. Tap Portion of (32) in Figure 1) through which the binding force is communicated that fixes the cradle (32) to the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1).

Regarding claim 14, Allen et al., discloses the binding assembly (i.e. Strap Portion securing the horizontal bar of bicycle (16) in Figure 1) comprises the lever (i.e. Tap Portion of (32) in Figure 1) through which the binding force is communicated that fixes the cradle to the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1).

Regarding claim 15, Allen et al., discloses the through-passage comprises the series of apertures, at least one of which is configured in the non-transporting configuration (i.e. Unfasten / Unclasp (32)) to accommodate reciprocation of the elongate arm (30A) therein and is reoriented in the bicycle transporting configuration (i.e. Fasten / Clasp (32) in Figure 1) to bind on the elongate arm (30A) and resist reciprocation of the elongate arm (30A) therein.

Regarding claim 16, Allen et al., discloses different portions of the cradle (32) are constructed from different durometer material (See Column 3, lines 23 – 26).

Regarding claim 18, Allen et al., discloses portions of the cradle (32) establishing the tightenable fit to the arm (30A) are constructed from the material (See Column 3, lines 23 – 26) susceptible to cold-flow creep, the portions experiencing creep effects when tightened upon the arm (30A) in the bicycle transporting configuration (i.e. Fastened / Clapsed (32) in Figure 1) and the portions experiencing reduced creep effects when loosened upon the arm (30A) in the non-transporting configuration (i.e. Unfastened / Unclasp (32)) in comparison to when in the bicycle transporting configuration (i.e. Fastened / Clapsed (32) in Figure 1).

Regarding claim 20, Allen et al., discloses the cradle (32) further comprises the base (See U-Shape Portion of (32) in Figures 1 & 2) for receiving the bicycle frame tube

(16) and the variably adjustable, flexible retaining strap (See Figure 1) for anchoring the bicycle frame tube (16) in the base (See U-shape portion of (32) in Figures 1 & 2).

Regarding claim 22, Allen et al., discloses the base (See U-Shape Portion of (32) in Figures 1 & 2) further comprises the fastening tab (See Side of base in Figure 1) and the retaining strap (See Strap across horizontal bar of (16) in Figure 1) comprises fastening holes (See Holes on strap in Figure 1) that cooperatively constitute the custom-fit securement mechanism for anchoring the bicycle (16) in the cradle (32).

Regarding claim 23, Allen et al., discloses the cradle (32) comprises the plurality of variably configurable cradle portions (See Figures 1 & 2), at least one of the cradle portions being the binding assembly (See Mid-Section Ring Portions of (32) in Figures 1 & 2) that more forcefully abuts the elongate arm (30A) in the bicycle transporting configuration (Fastened / Clapsed (32) in Figure 1) than in the non-transporting configuration, the binding assembly (See Mid-Section Rings Portion of (32) in Figure 1 & 2) being actuated by the flexible retaining strap (See strap across horizontal bar of (16) in Figure 1) configured to releasably anchor the bicycle frame tube (16) in the base (See U-shape portion of (32) in Figures 1 & 2).

Regarding claim 24, Allen et al., discloses the through-passage being variably constricting upon the arm (30A) between the bicycle transporting configuration (i.e.

Fasten / Clasp (32) in Figure 1) and the non-transporting configuration (i.e. Unfasten / Unclasp (32)).

Regarding claim 25, Allen et al., discloses the variable constriction of the through-passages upon the arm (30A) is actuated by the flexible retaining strap (See Figure 1) configured to releasably anchor the bicycle frame tube (16) in the base (See U-Shape Portion of (32) in Figure 2).

Regarding claim 26, Allen et al., discloses the flexible retaining strap (See Figure 1) acts on the binding portion of the cradle (32) via the lever portion through which the binding force is communicated and that fixes the cradle (32) to the elongate arm (30A) in the bicycle transporting configuration (i.e. Fasten / Clapsed (32) in Figure 1).

Regarding claim 30, Allen et al., discloses each of the apertures continuously encircles the elongate arm (30A) See Figures 1 & 2).

Regarding claim 31, Allen et al., discloses the cradle (32) further has the elastomeric component located proximate to the through-passages where during transporting configuration (i.e. Fasten / Clapsed (32) in Figure 1) the elastomeric component is frictionally biased against the elongate arm (30A) thereby causing the binding effect interposed therebetween whereby resistance to longitudinal reciprocation is increased (See Column 3, lines 14 – 26).

4. Claim 27 is rejected under 35 U.S.C. 102(e) as being anticipated by Allen et al (U.S. Patent Number 6336580 B1).

Allen et al., discloses the load carrier arrangement (10) further comprises the hub (22) coupled between the support member (24) and the load carrying member (10); the hub (24) having the socket (See Aperture for (30B) in Figure 1) formed therein, the socket (See Aperture for (30B) in Figure 1) being substantially cylindrically-shaped (See Figure 2) and configured to receive the substantially cylindrically-shaped insert portion of the load carrying member (10) therein; the load carrying member (10) having the insert portion and the load carrying portion (10) with the angle (See Figure 2) interposed therebetween which fixes the insert portion and the load carrying portion (10) in non-parallel orientation to one another (See Figures 1 & 2); and the insert portion of the load carrying member capable of being twistably positioned in the socket (See Aperture of (30B) in Figure 1) thereby enabling twisting action therein which affects the transition between the load carrying orientation and the twist-adjusted orientation (See Figure 2).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17, 19, 21, 28 & 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al., (U.S. Patent Number 6336580 B1) in view of Erickson et al., (U.S. Patent Number 6386407 B1).

Allen et al., does not disclose at least one portion of the cradle is constructed from the plastic susceptible to cold-flow creep.

Erickson et al., teaches at least one portion of the cradle (36) is constructed from the plastic susceptible to cold-flow creep (See Column 6, line 54 & See Column 8, line 12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make at least one portion of the cradle being constructed from the plastic susceptible to cold-flow creep as taught by Erickson with the invention of Allen et al., in order to enhance durability.

Regarding claim 19, Allen et al., does not disclose the material of construction is plastic.

Erickson et al., teaches the material of construction is plastic (See Column 6, line 54 & See Column 8, line 12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the material of construction is plastic as taught by Erickson with the invention of Allen et al., in order to enhance durability.

Regarding claim 21, Allen et al., does not disclose the base further comprises the ribbed bicycle-engaging surface for resisting twisting action of the bicycle frame tube in the base.

Erickson et al., teaches the base (37 & 41) further comprises the ribbed bicycle-engaging surface (44) for resisting twisting action of the bicycle frame tube (60 & 61) in the base (37 & 41) (See Figures 2 & 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the base further comprises the ribbed bicycle-engaging surface for resisting twisting action of the bicycle frame tube in the base as taught by Erickson et al., with the invention of Allen et al., in order to enhance security.

Regarding claim 28, Allen et al., discloses the angle interposed between the insert portion and the load carrying portion (10).

However, Allen et al., does not disclose the angle measuring approximately forty-five degrees so that the one-hundred and eighty degree twist of the insert portion in the socket causes the load carrying portion to transition between approximately perpendicular orientation.

It would have been obvious to one having ordinary skill in the art the time the invention was made to make the angle measuring approximately forty-five degrees so that the one-hundred and eighty degree twist of the insert portion in the socket causes the load carrying portion to transition between approximately perpendicular orientation, since it has been held that where the general conditions of the claim are disclosed in the

prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claim 29, Allen et al., does not disclose the discloses the angle interposed between the insert portion and the load carrying portion measuring approximately forty-five degrees so that the less than ninety degree twist of the insert portion in the socket causes the load carrying portion to transition between two different load carrying orientations.

It would have been obvious to one having ordinary skill in the art the time the invention was made to make the angle interposed between the insert portion and the load carrying portion measuring approximately forty-five degrees so that the less than ninety degree twist of the insert portion in the socket causes the load carrying portion to transition between two different load carrying orientations, since it has been held that where the general conditions of the claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Response to Arguments

7. Applicant's arguments with respect to claims 1 – 31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Robins et al., (U.S. Patent Number 6286738 B1); Robins et al., (U.S. Patent Number 6467664 B2); and Bloemer et al., (U.S. Patent Number 5573165).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LESTER L. VANTERPOOL whose telephone number is (571)272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. L. V./
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782